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for coal which cannot otherwise be reasonably met." The court below held that, as interpreted by the Secretary of the Interior in previous cases, the regulation "precluded the grant of leases to these lands unless market need for additional coal was shown," that the regulation as thus interpreted, though not specifically incorporated in the leases, was one of the conditions of leases of federal coal lands and created a contract right in each lessee to be one of a limited number of lessees.

The regulation is clear upon its face that no such right was, or was intended to be, granted to federal coal lessees. It is addressed only to subordinates of the Secretary of the Interior, places no restraint on the Secretary, and does not prevent him from issuing leases to those who do not meet its requirements. Cf. *Williams* v. *Wingo*, 177 U. S. 601, 602-603. Moreover, the previous decisions of officials in the Department of the Interior, applying the regulation, do not warrant the conclusion that the discretion of the Secretary of the Interior to lease government lands was circumscribed by the regulation, or that the regulation, as interpreted, created or was intended to create any right in federal coal lessees to be free of competition except in cases where a showing of a market need for coal could be made. Nor do they warrant a conclusion, contrary to the determination of the Secretary in the present case, that the regulation applies to an applicant who prior to the approval of its applica-

tion for a federal lease, had successfully established a going coal mining business on adjacent nonfederal lands but whose deposits were becoming exhausted.

The effect given the regulation by the court below is contrary to established principles for construing legislation or regulations alleged to constitute a public grant or to operate as a restriction on the power of government by the creation of private rights. Such provisions are to be strictly construed against the grantee and in favor of the public. In the light of this principle, the instant regulation, whether applicable to action by the Secretary or only to his subordinates, is no more than an internal "guide post" in passing on applications for coal leases and confers no litigable rights on those who may benefit thereby. Cf. *Perkins* v. *Lukens Steel Co.*, 310 U. S. 113, 127. Even if the regulation had clearly stated that no leases would be granted except upon the showing set out therein, it would have been only a legislative declaration of current policy and would have vested no rights in one who thereafter procured a lease. This would be true even if the purpose and sole effect of the regulation were to limit competition in coal production (which the regulation's history makes clear is not the case). Cf. *Tennessee Power Co.* v. *T. V. A.*, 306 U. S. 118, 139-141. Moreover, the general principle that a person's enjoyment of a benefit under public legislation cannot vest him

with the legal right to have the benefit perpetuated applies with even greater force where, as here, the effect of recognizing such a legal right is to restrict the power of the government in the disposition of its property. Cf. *Reichelderfer* v. *Quinn*, 287 U. S. 315, 318-321.

The decision below irrevocably commits the Government, so long as there are leases outstanding which have been made since the regulation was promulgated in 1934, to a policy of granting coal leases solely upon consideration of whether an additional mine is needed and that need cannot otherwise be reasonably met, regardless of the extent to which other circumstances may make leasing desirable or necessary. Under the court of appeals decision, even the Congress could not change that policy without violating contract rights of federal coal lessees. In view of the repeated holdings of this Court that "statutes said to restrict the power of government by the creation of private rights are, like other public grants, to be strictly construed for the protection of the public interest," the decision below is clearly erroneous.

B. The authorities cited in the majority opinion below do not support its conclusion that the regulation created contract rights in respondent to be free from competition. This is not a case where the United States has induced persons to become coal lessees upon the specific and explicit promise that competition will be restricted. Nor is it a case

respondent had no standing to sue, and that the United States was an indispensable party (R. 24-25). On November 17, 1947, the district court dismissed the complaint on the ground that it did not state a cause of action (R. 84). The district court was of the view that respondent had no standing to sue, that the Secretary's power to grant coal leases under the Mineral Leasing Act (30 U. S. C. 201) is discretionary and not subject to judicial review, and that the regulation in question was a declaration of policy which did not diminish or restrict the Secretary's discretionary powers (R. 29-30).[3] The court expressed the opinion, however, that the United States was not a necessary party.

2. Respondent appealed from the judgment of dismissal and on March 29, 1948, the Court of Appeals affirmed on the ground that the claim asserted was a general right of the coal industry to be protected against competition and that respondent, as a member of the coal industry in general, had no standing to sue. *Sheridan-Wyoming Coal Company, Inc.* v. *Krug*, 168 F. 2d 557 (R. 31-34). Although the parties had argued the merits of the matter, the appellate court declined to decide whether respondent, as lessee of federal coal lands,

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[3] The district court expressed no opinion at the time of entering the order of dismissal. Its views are found in an opinion delivered from the bench and the conclusions of law filed in passing on a motion by respondent for a preliminary injunction (R. 16-18, 29-30).

could maintain the suit, because the original complaint did not allege that respondent was a lessee (R. 33). However, upon motion by respondent (R. 35), it thereafter amended its judgment to permit the trial court to entertain a motion to amend the complaint, "with leave to the District Court to dispose of such motion, if made, in such manner as in its discretion seems proper" (R. 36).

3. Upon remand, respondent moved for leave to file an amended complaint (R. 49-50), which was substantially the same as the original complaint (*supra*, pp. 4-7) except for allegations (a) that respondent is a lessee of public coal lands,[4] (b) as to its investment under the lease, (c) that the Department of the Interior, since the promulgation of the regulation relied upon, had not issued coal leases in the absence of a finding of a need for an additional mine, and (d) that the regulation and the practice thereunder were part of the consideration bargained for and obtained in the execution of respondent's lease (R. 51-52).

Petitioner opposed the granting of the motion, and on July 6, 1948, it was denied by the district court on the ground that the proposed new matter added nothing material to the claim and that granting leave to file the amended complaint "would be idle and would needlessly prolong the

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[4] Respondent's present lease was issued in September, 1943 (R. 51). It had been a lessee of federal coal lands for many years prior thereto (R. 1).

litigation" (R. 86-87). Upon a second appeal by respondent, the Court of Appeals, on January 31, 1949, reversed the trial court for refusing to allow respondent to file an amended complaint and directed the trial court to allow the filing of that complaint and to deny petitioner's motion to dismiss insofar as it rests upon the ground that respondent has no standing to sue (R. 97-106).[5]

At the end of its opinion, the court of appeals summarized its reasoning (R. 104-105). In paraphrase, it was as follows: The Secretary was empowered to withdraw the lands from leasing and therefore could impose conditions upon which he would issue leases. Since the regulation was published in the Code of Federal Regulations, it had the force of a statute until modified or repealed. Rightly construed and as it had been construed until the Big Horn application, it meant that leases would not be issued in the absence of a showing that an additional coal mine was needed. Since

[5] Respondent had both taken an appeal as of right and applied for allowance of a special appeal under Section 17-101, District of Columbia Code. On September 17, 1948, the special appeal was denied, together with a motion to dismiss the appeal as of right (R. 94). As was pointed out in the petition for certiorari (p. 6), it is believed that this latter order was erroneous, but it is not urged that the judgment should be reversed on this ground since the court below probably had power to entertain the special appeal under the then Section 17-101 of the District of Columbia Code, and a reversal on that ground would only prolong this litigation if, as would be probable, the amended complaint were filed as a new suit.

respondent's lease recited, in its introductory clause, that it was made subject to the Leasing Act and since 43 C. F. R. sec. 193.3 was valid under that Act, the regulation was one of the conditions of the lease contract. That contract conferred and was intended to confer on respondent the right to be one of a limited number of lessees and, as possessor of that valuable right, respondent could sue for its protection. The Secretary's wide discretion under the Leasing Act does not allow him "to violate or ignore an existing departmental regulation which established one of the conditions upon which he entered into a contract of lease." (R. 105).

Judge Edgerton, who had concurred in the result on the first appeal, this time dissented, saying (R. 106):

> Our former judgment was that the District Court might grant or deny a motion to amend the complaint "as in its discretion seems proper." That judgment became final long ago. This court now reverses it and required the District Court to grant the motion. This reversal seems to me not only inconsistent with orderly procedure but probably beyond our authority.
>
> I agree with the District Court that the proposed amendment of the complaint would add nothing material. On the former appeal we did not undertake to decide that question. I think the Department regulation on which

this court now relies was not intended to be, did not appear to be, and was not a term or condition of appellant's lease. Its apparent purpose and effect were not to increase the rights of lessees, but to limit the expectations of applicants for leases. It did not purport to control the discretion of the Secretary in making "favorable recommendations." Moreover the United States is a necessary party when suit is brought to prevent the leasing of its lands.

4. A temporary restraining order issued *ex parte* by the district court, at the time of the institution of the suit, was continued until the entry of a temporary injunction by the court of appeals, pending the disposition of the first appeal (R. 89-90). Upon the first remand, the district court, on June 4, 1948, with the consent of the petitioner, granted another temporary restraint so that time would be available for consideration of the motion to amend the complaint (R. 108-109). This restraint was continued by the court of appeals pending final disposition of the second appeal (R. 92). On reversing the district court in the second appeal, the court of appeals directed continuance of the temporary injunction until final disposition of the case by the trial court (R. 106). The detailed facts showing how the issuance of the lease has been restrained are set out in the Argument, *infra*, pp. 53-57.

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In holding that respondent had standing to sue to enjoin the Secretary of the Interior from making a lease of federal coal lands.

2. In instructing the district court to deny petitioner's motion to dismiss insofar as it rests upon the ground that respondent has no standing to sue.

3. In holding that there is jurisdiction to enjoin the Secretary of the Interior from executing a lease of public lands of the United States.

4. In reversing the order of the district court.

5. In ordering continuance of the injunction until final disposition of the case by the district court.

SUMMARY OF ARGUMENT

I

A. A regulation of the Secretary of the Interior —promulgated under the authority vested in him by the Mineral Leasing Act to lease federal coal lands and to make such regulations as may be necessary to carry out the purposes of the Act, and published in the Federal Register—stated that the General Land Office "will make favorable recommendation" for the granting of leases on federal coal lands "only in cases where there has been furnished a satisfactory showing that an additional coal mine is needed and that there is an actual need

where a statute has granted all aggrieved persons a special right to obtain a review of administrative orders benefiting their competitors. And it is not a situation where a public utility having an exclusive right against persons engaging in the same business without a permit or under a void permit may complain of competition under a permit whose issuance was illegal under the Fourteenth Amendment. These cases, therefore, do not help respondent to establish a standing to sue, absent a prior showing that it has been given, by contract or statute, a special right to be free from competition. Such a special right it does not have.

II

The effect of the decision below is to create a negative easement in the form of a restrictive covenant on all other federal coal lands—and to restrict the power of Congress to dispose of public property, as well as of Secretaries of the Interior to change the policy governing issuance of coal leases. The Secretary of the Interior has been given no authority which would permit him to create such rights, or to act so as to bring about such a restriction, or to circumscribe the discretion of his successors. Moreover, the express terms of the Mineral Leasing Act provide affirmative proof, if any were needed, that Congress did not intend to grant such authority.

III

The United States is a necessary party to any suit against property in which it has an interest, and it is likewise indispensable to a suit seeking specific performance of its contracts. Thus whether the instant suit be treated as an action to enforce a restrictive contract provision or as a suit to establish the existence of a property right in the nature of a negative easement, it will not lie against a government officer. This result is not changed by the fact that only negative relief is asked, or that the alleged governmental contract constitutes a negative rather than an affirmative promise, i.e., an agreement not to lease public lands. The contract, if any, is still a contract of the United States, and the coal lands belong to it and not to petitioner.

Cases such as *United States* v. *Lee*, 106 U. S. 196, and *Land* v. *Dollar*, 330 U. S. 731, where the governmental officer was dealing with property in which the plaintiff claimed the Government had no interest, obviously cannot support the present decision which attempts to control the leasing of land admittedly owned by the United States. The claim that the government officer had no statutory authority to grant a new lease does not alter the fact that the plaintiff is seeking to establish a right to restrict the leasing of federal lands—a question which cannot be determined in the absence of the United States.

it." *Tennessee Power Co.* v. *T. V. A.*, *supra*, 141; cf. *Williams* v. *Wingo*, 177 U. S. 601; *St. Anthony Falls Water Power Co.* v. *St. Paul Water Comrs.*, 168 U. S. 349; *Fertilizing Co.* v. *Hyde Park*, 97 U. S. 659, 667; *Federal Communications Commission* v. *Sanders Radio Station*, 309 U. S. 470, 473-476; *Alabama Power Co.* v. *Ickes*, 302 U. S. 464, 479-484.

These authorities make it abundantly clear that there is no warrant for reading the respondent's lease as if it had specifically provided, "The United States will not lease other federal lands for use for coal mining purposes in competition with the lands here leased except upon a showing that an additional coal mine is needed and that there is an actual need for coal which cannot otherwise be reasonably met." Yet that is the result of the decision below.[9]

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[9] Although it purported merely to determine that respondent had standing to sue and that the motion to amend the complaint should be granted (R. 105), the court of appeals also indicated its disapproval of the Interior Department's interpretation of the regulation as inapplicable where a federal lease was needed to continue an existing mine in operation (R. 103). This issue goes to the merits of respondent's case, rather than its right to maintain this action, but we should like to point out that, as the Under Secretary explained in approving Big Horn's lease application, none of the earlier decisions involved a situation where a going coal mining business had been established under leases issued by a State, and "while the Department in the interpretation and application of its regulation has endeavored to prevent the creation of conditions of excessive competition, it has not

IV

In reversing the order denying leave to amend the complaint, the court of appeals directed that a temporary restraint previously issued by the district court, with petitioner's consent, "be continued until final disposition of the action by the trial court." Such a summary conversion of the original order into an injunction *pendente lite* was unwarranted, and in so doing the court of appeals exceeded its jurisdiction. For an appellate court, like a district court, has no power to enter an injunction *pendente lite*, without hearing, findings of fact, or conclusions of law, and it is likewise without authority peremptorily to require a district court to issue such a bare preliminary injunction. The procedure followed by the court below deprives litigants of the exercise of judicial discretion to determine whether, on all the relevant circumstances, equity injunctive power should be exercised. Moreover, because of the manner of entry of the order, it would seem to leave petitioner without any means of seeking relief if facts originally thought to justify an injunction should change.

ARGUMENT

I

The Regulation Pertaining to the Leasing of Federal Coal Lands Vests No Rights in Lessees of Other Federal Coal Lands.

The Court of Appeals upon the first appeal held, quite correctly, that respondent had no standing to enjoin the issuance of the lease to Big Horn merely

B. *The authorities cited by the majority opinion below do not support its result.*—1. In its effort to read the regulation into the lease and thus create an enforceable contract right, the court below relied upon *Wood* v. *Lovett*, 313 U. S. 362 (R. 104). In that case, a state statute provided that no sale of land acquired by the state for nonpayment of taxes should be set aside because of any irregularity or informality in the process of assessing and levying the taxes or in the sale of the property for delinquent taxes. As this Court held, that statute was

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undertaken to remove competition already established" (R. 65). The Secretary of the Interior, in denying a motion for exercise of his supervisory powers, concurred in the interpretation placed on the regulation by his subordinates (R. 66-70). And in a letter to the chairman of the House Committee on Public Lands dated June 9, 1947, regarding a bill to amend the Mineral Leasing Act to increase the maximum size of a coal leasing tract, the Acting Secretary, with obvious reference to this regulation, stated, "Coal mining is and long has been a sick industry because of overproduction. For the past 15 years this Department in recognition of this fact has issued new coal leases or permits only upon a competent showing of the need for a new source of supply *or to continue an existing mine in operation.*" [Italics supplied.] U. S. Code Cong. Serv., 80th Cong., 2d sess., p. 1642. See also *supra*, pp. 5-7.

This interpretation is neither unreasonable nor plainly wrong, at the least, and settled doctrine would seem to require such determinations of the Interior Department relating to the public lands to be accepted by the courts, in injunction or mandamus actions. *Work* v. *Rives*, 267 U. S. 175, 177-178; *Hall* v. *Payne*, 254 U. S. 343, 347-348; *Ness* v. *Fisher*, 223 U. S. 683, 691-692; *Riverside Oil Co.* v. *Hitchcock*, 190 U. S. 316, 324-5; *Wilbur* v. *United States*, 281 U. S. 206, 218-222; cf. *Decatur* v. *Paulding*, 14 Pet. 497, 515.

because it would be injured by the competition of a new leasehold issued in alleged violation of the regulation (R. 31). Upon the second appeal, the majority opinion, having noted that the regulation was issued under authority of the Mineral Leasing Act and that the lease to respondent made reference to that Act (by providing that it was made "under, pursuant and subject to" the provisions of the Act), concluded that the regulation was in effect incorporated into the lease. On that premise, it held that the lease contained an agreement that the United States would limit future coal-mining leases of public lands to instances in which there was a satisfactory showing of a need for coal which could not otherwise be met, and hence that respondent had standing to maintain this suit by virtue of "its rights as owner of a property right by contract * * *." (R. 98.)

A. *The regulation does not purport to vest any rights in respondent or other lessees, and it would be contrary to settled principles of construction to give it the effect prescribed by the court below.*— 1. A reading of the regulation is sufficient to refute any contention that an agreement to limit future coal leases was entered into with respondent, or that the regulation vested or was intended to vest in lessees of federal coal lands a right to be free from competition under subsequent leases on other federal lands except where there could be shown an actual need for additional coal. The regulation

states that "the General Land Office will make favorable recommendation" on lease applications only where such a showing is made. It does not state that leases will not be issued unless the showing is made. It makes no promise that holders of existing leases or anyone else will be assured freedom from competition. It does not purport to guarantee that respondent's lease will be "one of a limited number of leases" (R. 105). It is nothing but a directive by the Secretary of the Interior to his subordinates and relates only to their *recommendations.* Its publication in the Code of Federal Regulations was merely notice to prospective lessees that they would be required to show that an additional mine was needed if they expected to obtain a favorable recommendation from the General Land Office. Neither the regulation nor its publication purports to state what action will be taken ultimately, or to bind the Secretary. As Judge Edgerton stated in his dissent below (R. 106), "Its apparent purpose and effect were not to increase the rights of lessees, but to limit the expectations of applicants for leases. It did not purport to control the discretion of the Secretary in making leases, but only that of his subordinates in making 'favorable recommendations' ".

The majority opinion did not controvert this plain meaning of the regulation by reference to any of its language. Instead, the court based its extraordinary construction of the regulation on the assertion that the Secretary of the Interior

intended to be and was an offer by the state to each prospective purchaser of a title which was to be immune from attack on grounds theretofore available. 313 U. S. at 368-9. Consequently, the protection it afforded to the title necessarily inured to every purchaser acting under it and constituted a contract with him.

But the regulation in the present case was certainly not intended as an inducement to persons to seek mineral leases and operate coal mines—much less a promise that no further leases would be granted except upon a showing of necessity for an additional mine—and, as we have shown (*supra*, pp. 19-33), it would violate the regulation's provisions and purpose, as well as the pertinent principles for interpreting such public grants, to read it in that way. And there is, of course, no rule that every statute which results in a benefit to those who choose to place themselves in a position to take advantage of its provisions constitutes a contract between the Government and the individual. Cf. *Wisconsin & Michigan Ry. Co.* v. *Powers*, 191 U. S. 379. On the contrary, the *Powers* case shows that even a statute which is intended to induce action on the part of those who expect to benefit thereby may not give rise to contract rights. In that case, a statutory tax-exemption applicable to railroads which might thereafter build and operate a line within a certain area was repealed after the plaintiff railroad had constructed its line. The contention that the act created an irrevocable contract

"had consistently held that it precluded the grant of leases to these lands unless market need for additional coal was shown" (R. 104). But the fact that officials of the Department of the Interior have in the past denied applications for coal leases primarily on the basis of this regulation is no more than would be reasonably expected to follow the announcement of a policy to guide recommendations, and cannot, of course, operate to vest rights not already granted by the regulation itself. The denial of these applications on the ground that the regulation precluded their being granted and that "revision of the department rule *at this time* would be harmful to the lignite coal industry and not in the public interest" (R. 74),[6] or that "the application advances nothing which would warrant revision of the regulation" (R. 77), has no greater effect than a series of discretionary denials by the Secretary, on the ground that there was no need for additional coal mines, would have had in the absence of any regulation at all. Consistent exercise of his discretion so as to implement the same general policy as is implicit in this regulation would not preclude the Secretary from adopting a new policy or altering the old one (see *infra*, pp. 42-43). Nor can it be said that a consistent line of rulings in accordance with the recommendations of his subordinates would convert a direction to the

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[6] Unless otherwise noted italics have been supplied throughout this brief.

lower echelons of the Department to conform their recommendations to the given policy into a rule binding the Secretary's own discretion and determinations. The Secretary retained the power to issue mineral leases in himself, and nowhere did he purport to regulate his own action in this field.

Even if the Secretary had delegated to the General Land Office authority to issue leases, but had prohibited the issuance of leases except under the circumstances described in this regulation, the regulation would not have tied the hands of the Secretary or prevented him from granting leases without a showing of actual need, whenever in his judgment he saw fit. *Williams* v. *Wingo*, 177 U. S. 601, 602-603. In that case, the state legislature gave the county courts power to license ferries and by the same act forbade them to license a second ferry within half a mile of one already established. After the plaintiff had established a ferry under a license from the county court, the legislature granted the defendant the right to maintain a ferry within less than one-half mile of plaintiff's ferry. In holding that the part of the statute prohibiting the licensing of a second ferry within one-half mile of one already established created no contract rights between plaintiff and the State, this Court pointed out that the statute placed no restraint upon legislative action, was not binding on the legislature itself, and did not prevent it from authorizing the second ferry. Only the county courts were so restricted. The regulation in the pres-

ent case, which does not purport to go so far as the statute in the *Wingo* case, can have no greater effect.

2. Assuming, however, that the regulation did prescribe a rule to be followed by the Secretary, and not only by his subordinates, there is nothing in its purpose or history which would grant a right to an existing lessee to prevent the issuance of a lease to another applicant in contravention of the regulation's terms. Both the regulation and the decisions under it were directed mainly toward a policy of disposing of government coal lands in such a manner as would be to the greatest advantage of the Government as a landowner and of the people of the nation as consumers. They were not directed toward protecting the competitive status of existing lessees. In fact, the Departmental decisions denying applications show that protection of the coal industry from overproduction (much less federal lessees alone)—through the limitation of the number of federal lessees—was not the sole or even the primary purpose of the regulation nor the sole or primary reason for denying the applications. And to the extent that the Department was interested in preventing overproduction it was not out of solicitude for the private position of existing lessees but in order to preserve public resources and to protect the general public. See R. 64-65, 72-74.

The Government's interest as proprietor of the

coal lands has been uniformly stressed. As was stated in one of the leading Departmental decisions applying the instant regulation (R. 74):

> Were the departmental rule to rest alone upon the general public interest it would be a reasonable and appropriate measure. But it finds firmer support. *With respect to coal deposits upon the public domain, the Government assumes the capacity of a proprietor who desires the fruitful exploitation of the natural resources upon his lands.*
>
> Overproduction in the bituminous coal industry strikes at the prosperity of producers large and small, old and new. Overhead costs are slashed and then, as the effects of overproduction accumulate, impairment settles upon the ability of producers to meet fixed commitments. *As a royalty owner the Government suffers.* Finally, with both capital and income exhausted, many producers give up the losing battle. In the light of conditions which exist in the industry, no market exists in which these producers can dispose of their mines and recover even a portion of their investments. *Again the Government is the loser,* for an abandoned mine frequently deteriorates beyond the point where it will be profitable within the foreseeable future to reopen it for the recovery of the merchantable coal left in the ground. Props give way, roofs collapse, water fills the entries and passageways, rails and equipment waste away in rust and corrosion. *To the consumers of the Nation good coal once potentially available through opera-*

tion of the mine is lost and to the Government the royalties it might have brought are gone.

Moreover, as was pointed out in that decision, the Department of the Interior was not entrusted with the establishment or administration of general governmental policy relating to the lignite coal industry (R. 74). Neither was it in a position as proprietor of federal coal lands to dominate the industry and to eliminate the effects of overproduction (R. 74). However, it was said that the Department would not knowingly contribute to an unfortunate situation and therefore "this consideration [the effect of overproduction on the coal industry] *taken in conjunction with* the position of the Department as a present and potential royalty owner," indicated that the department rule (embodied in section 193.3) should not be revised at that time. And with similar reference to the Government's status as royalty owner, and the purpose of the present regulation to protect that position, the General Land Office pointed out, in 1934, in transmitting the instruction here involved to the various land offices (Circular No. 1318, February 1, 1934, 54 L. D. 352), that previous regulations had required applicants for federal coal leases to submit a statement of the general situation of the land with respect to other mines and outlets to market, but that many applications failed to do so, and it had been found that for various causes many lessees were unable to comply

with the minimum tonnage required by their leases and numerous requests were made for relief under the tonnage requirements, as well as in the matter of payment of annual rentals.

3. Thus, the regulation, as appears both from its language and from the decisions applying it, is no more than an internal housekeeping rule laid down as a guidepost in carrying out the discretionary power vested in the Secretary of the Interior to dispose of federal coal lands, and, like the statute in *Perkins* v. *Lukens Steel Co.*, 310 U. S. 113, creates no litigable rights in those who may benefit thereby. In the *Perkins* case, it was contended that a statute providing for the sale of supplies to the Government by means of public bids gave prospective sellers a right to bid and sell to the Government free from compliance with a condition imposed by the Secretary of Labor acting under an allegedly erroneous interpretation of another statute. The language of this Court (p. 127) in rejecting that contention is apposite here:

> Like private individuals and businesses, the Government enjoys the unrestricted power to produce its own supplies, to determine those with whom it will deal, and to fix the terms and conditions upon which it will make needed purchases. Acting through its agents as it must of necessity, the Government may for the purpose of keeping its own house in order lay down guide posts by which its agents are to proceed in the procurement of supplies, and

which create duties to the Government alone. It has done so in the Public Contracts Act. That Act does not depart from but instead embodies the traditional principle of leaving purchases necessary to the operation of our Government to administration by the executive branch of Government, with adequate range of discretion free from vexatious and dilatory restraints at the suits of prospective or potential sellers. It was not intended to be a bestowal of litigable rights upon those desirous of selling to the Government; it is a self-imposed restraint for violation of which the Government—but not private litigants—can complain.[7]

The court below, as we have said (*supra*, pp. 10-11, 20-24), has started out by treating the regulation as if it read as follows: "Leases of coal lands will be granted only in cases where there has been furnished a satisfactory showing that an additional coal mine is needed and that there is an actual need for coal which cannot otherwise be reasonably met." Having thus construed the regulation, the court went on to hold that it had the effect of a statute and became one of the conditions of the lease (R. 104). Even if the regulation did so provide or even if it had been so construed by the Department of the Interior, it would be only a declara-

[7] See also *United States* v. *New York and Porto Rico Steamship Co.*, 239 U. S. 88, 92 (statute directing Government contracts to be in writing) and *American Smelting & Refining Co.* v. *United States*, 259 U. S. 75, 78 (advertising and low-bidder legislation).

tion of legislative policy for the governance of that Department, like the Walsh-Healey Act, and would vest no justiciable rights in respondent. Cf. *Tennessee Power Co.* v. *T. V. A.*, 306 U. S. 118, 139-141; *Reichelderfer* v. *Quinn*, 287 U. S. 315, 321-322; *Stanislaus County* v. *San Joaquin C. & I. Co.*, 192 U. S. 201, 205-211; *Wisconsin & Michigan Ry. Co.* v. *Powers*, 191 U. S. 379, 387; *Williams* v. *Wingo*, 177 U. S. 601; *Newton* v. *Commissioners*, 100 U. S. 548, 559; *Fertilizing Company* v. *Hyde Park*, 97 U. S. 659, 667; *Salt Company* v. *East Saginaw*, 13 Wall. 373. See *infra*, pp. 29-33.

4. "Statutes said to restrict the power of government by the creation of private rights are, like other public grants, to be strictly construed for the protection of the public interest." *Reichelderfer* v. *Quinn*, 287 U. S. 315, 321.[8] It is fundamental that public grants are to be strictly construed against the grantee and in favor of the public. *Northern Pacific R. Co.* v. *United States*, 330 U. S. 248, 257; *Keefe* v. *Clark*, 322 U. S. 393, [illegible]; *Reichelderfer* v. *Quinn*, 287 U. S. 315, 321; *Larson* v. *South Dakota*, 278 U. S. 429, 435; *Darling* v. *Newport News*, 249 U. S. 540, [illegible]; *Water Company* v. *Knoxville*, 200 U. S. 22, 31-33; *St. Anthony Falls Water Power Co.* v. *St. Paul*

[8] The court below made much of the fact that the regulation was published in the Federal Register as one of general effect, and concluded that it had the force and effect of a statute (R. 100, 104).

Water Comrs., 168 U. S. 349, 372; *Newton* v. *Commissioners*, 100 U. S. 548, 561; *Turnpike Co.* v. *Illinois*, 96 U. S. 63, 68-69; *Charles River Bridge* v. *Warren Bridge*, 11 Pet. 420, 546-548; cf. *Wisconsin & Michigan Ry. Co.* v. *Powers*, 191 U. S. 379, 385-387. This rule applies both in determining the existence of the contract or grant and, where the contract exists, in determining its scope and extent. "A contract binding the State is only created by clear language, and is not to be extended by implication beyond the terms of the statute." *Williams* v. *Wingo*, 177 U. S. 601, 603. "Nothing passes by implication." *Charles River Bridge* v. *Warren Bridge*, 11 Pet. 420, 546. The legislative act must be "plain and beyond all doubt." *St. Anthony Falls Water Power Co.* v. *St. Paul Water Comrs.*, 168 U. S. 349, 372.

In the *Reichelderfer* case, *supra*, a statute under which certain lands were purchased or condemned for park purposes provided that the lands were "perpetually dedicated and set apart as a public park"; benefits were assessed against surrounding lands to the extent that they were "specially benefited by reason of the location and improvement" of the park. This Court held that surrounding owners against whom benefits had been assessed acquired no right to have the land used for park purposes, saying (pp. 318, 319):

> * * * By dedicating the lands thus acquired to a particular public use, Congress declared a

> public policy, but did not purport to deprive itself of the power to change that policy by devoting the lands to other uses. The dedication expressed no more than the will of a particular Congress which does not impose itself upon those to follow in succeeding years. * * * if the enjoyment of a benefit thus derived from the public acts of government were a source of legal rights to have it perpetuated, the powers of government would be exhausted by their exercise.

In answer to the contention that by virtue of the assessment the surrounding owners had paid for the right to enjoy the special benefits accruing from the maintenance of the park in perpetuity, the Court said (p. 321):

> * * * the dedication of the park, a declaration of a present purpose, does not imply a promise to neighboring land-owners that the park would be continued in perpetuity. * * * The benefit of a governmental obligation which the statute neither expresses nor implies obviously was not to be assessed.

So here, if Congress had enacted a statute saying flatly that no federal coal lands would be leased except upon a showing of necessity for additional coal mines, it would amount to no more than a declaration of policy as to the manner in which the government would dispose of its property and could be revoked in whole or part without resulting liability to those benefited by the original statute.

The canon of strict construction would prevent such a statute from being construed as a grant of private rights to lessees, and would stress the public interest, rather than the competitive status of other mines, as the dominant purpose of the limitation. There is even stronger reason for interpreting the present regulation—speaking, as it does, solely in terms of recommendations by his subordinates to the Secretary—in the same way. *Supra*, pp. 20-27.

5. But even if the avowed purpose of such a statute or regulation were to restrict competition in the coal industry and thereby encourage and benefit federal coal lessees, it would create no rights in those who subsequently entered into leases of federal coal lands. Public utility statutes which require the obtaining of a certificate of public convenience and necessity as a condition of doing business do not confer a right to have that policy continued, and "afford[s] the corporation no legal cause of complaint by reason of the state's subsequently authorizing another to enter and operate in the same field." *Tennessee Power Co.* v. *T. V. A.*, 306 U. S. 118, 139. "Whether competition between utilities shall be prohibited, regulated or forbidden is a matter of state policy. That policy is subject to alteration at the will of the legislature. The declaration of a specific policy creates no vested right to its maintenance in utilities then engaged in the business or thereafter embarking in

between the state and such railroads as might thereafter comply with its terms was disposed of on the ground, first, that there was no adequate expression of actual intent on the part of the State to set change of position by the railroad against a promise not to tax, the Court saying (p. 387) "No doubt the State expected to encourage railroad building, and the railroad builders expected the encouragement, but the two things are not set against each other in terms of bargain." Secondly, the court took the broader ground that in view of the subject matter, "the legislature is not making promises, but framing a scheme of public revenue and public improvement. In announcing its policy and providing for carrying it out it may open a chance for benefits to those who comply with its conditions, but it does not address them, and therefore makes no promise to them. It simply indicates a course of conduct to be pursued, until circumstances or its views of policy change. It would be quite intolerable if parties not expressly addressed were to be allowed to set up a contract on the strength of their interest in and action on the faith of a statute, merely because their interest was obvious and their action likely, on the face of the law".

As we have shown, the regulation here involved obviously was not intended as an inducement to prospective lessees. Moreover, it was promulgated not to carry out any power granted the Secretary

of the Interior to alleviate the evils arising out of overproduction of coal, but to carry out the powers granted the Secretary to lease federal mineral lands. And even if it could be said that respondent would be justified in acting in reliance upon the regulation, it is "intolerable" that it be allowed to set up a contract which restricts the Secretary and even Congress in future dispositions of government coal lands.

2. It is thus clear that respondent does not, as the court below put it, have a status "of one claiming a property right by contract, threatened with invasion" (R. 98; 105). Respondent argues (Br. in Opp. 18) that it has a second basis for suit, which it defines as "the special interest arising from respondent's property status as a regulated member of a special class," citing *Frost* v. *Corporation Commission*, 278 U. S. 515; the *Chicago Junction* case (*Baltimore & Ohio R. R. Co.* v. *United States*, 264 U. S. 258), and cases relating to review of orders of the Federal Communications Commission.[10] And respondent refers to the regulation as "restricting an entire industry — Federal coal lessees—in the interest of the public" (Br. in Opp. p. 16), and refers to itself as a member of a "regulated, restricted and limited class" (Br. in Opp.

[10] *Federal Communications Comm'n* v. *National Broadcasting Co.*, 319 U. S. 239; *Scripps-Howard Radio* v. *Federal Communications Comm'n*, 316 U. S. 4; *Federal Communications Comm'n* v. *Sanders Radio Station*, 309 U. S. 470.

20). Although the court below relied upon the cited cases upon the second appeal (R. 105), their irrelevance is plain. Both the *Chicago Junction* case and the *Communications Commission* cases were based upon explicit statutory provisions giving parties aggrieved by action of the regulatory agency a right to appeal to the courts.[11] Indeed, as this Court was at pains to point out in *Federal Communications Comm'n* v. *Sanders Radio Station,* 309 U. S. 470, 475, the Communications Act "is clear that no person is to have anything in the nature of a property right as a result of the granting of a license." The competitor's standing to appeal was upheld only because the Court felt that it would have to read an express provision out of the statute in order to deny the right of appeal, 309 U. S. at 476-7.[12]

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[11] That the *Chicago Junction* case is based solely on the explicit statutory provision clearly appears from this Court's decision in *Alabama Power Co.* v. *Ickes,* 302 U. S. 464, 483-484.

[12] As the Court of Appeals held on the first appeal (R. 33-34), the fact that respondent was permitted to protest, before the Department, the issuance of a lease to Big Horn does not indicate, in any way, that respondent has any sufficient legal interest to invoke judicial aid in preventing the award of the lease. Cf. *Perkins* v. *Lukens Steel Co.,* 310 U. S. 113, 117-118. Unlike the situation in the *Sanders* case, there is here no Congressional act granting the right of judicial review to any "aggrieved person" or person "whose interests are adversely affected" by the administrative decision, and respondent is forced to justify its suit under the traditional rules as to standing-to-sue and legal rights.

An analysis of *Frost* v. *Corporation Commission*, 278 U. S. 515, demonstrates that respondent's present argument is simply another form of the contention rejected upon the first appeal, i.e. that any member of the coal industry had standing to challenge the issuance of a lease to Big Horn. The *Frost* case involved a business, cotton ginning, which had been declared to be a public utility and which could not be engaged in without a license. The Court held that the holder of a license had an exclusive right against "any person attempting to operate a gin without obtaining a permit or, what amounts to the same thing, against one who attempts to do so under a void permit" (278 U. S. at p. 521). Here, there is no regulation of an industry. It is perfectly legal for Big Horn Coal Company or anyone else to engage in the coal business in competition with respondent. The regulation is based not upon any governmental power to regulate and to restrict competition in the field of public utilities but upon the authority of the United States as owner of the public domain. The lessees of federal coal lands have no greater rights to be free of competition from other federal coal lands than do other members of the coal industry unless it be by virtue of their contracts, i.e., unless it is concluded that the regulation constituted an agreement, incorporated in their leases, that the United States would not so use its lands. Respondent's argument (Br. in Opp. p. 20) that "apart from its contract rights, inde-

pendently" it has standing to sue, is therefore erroneous for the same reason that no other member of the coal industry can complain of competition (R. 31).[13]

The decision below irrevocably commits the government—so long as there are leases outstanding which have been made since the regulation was promulgated—to a policy of granting coal leases solely upon consideration of whether an additional mine is needed and that need cannot otherwise be reasonably met, regardless of the extent to which other circumstances may make leasing desirable or necessary. Upon the theory of the court below, even the Congress could not change that policy without violating contract rights of federal coal lessees. In view of the repeated holdings of this Court that "statutes said to restrict the power of government by the creation of private rights, are, like other public grants, to be strictly construed for the protection of the public interest" (*supra*, pp. 29-30) the decision below is clearly erroneous.

II

As Construed by the Court Below, the Regulation Would Be Invalid Because It Would Exceed the Authority of the Secretary of the Interior.

A. Congress alone has the power to dispose of federal property. U. S. Const., Art. 4, sec. 3; *United States* v. *San Francisco*, 310 U. S. 16, 29;

[13] At pp. 20-37, we show that respondent had no such contract right as it claims.

Utah Power & Light Co. v. *United States*, 243 U. S. 389, 404. "Since the Constitution places the authority to dispose of public lands exclusively in Congress, the executive's power to convey any interest in these lands must be traced to Congressional delegation of its authority." *Sioux Tribe* v. *United States*, 316 U. S. 317, 326.

Under the holding of the court of appeals in this case, the regulation operates to grant to federal coal lessees a negative easement in the form of a restrictive covenant on all other federal coal lands,[14] and to restrict the power of Congress to dispose of the property of the United States. There is nothing in the Mineral Leasing Act of February 25, 1920, 41 Stat. 437, as amended, 30 U. S. C. 181, *et seq.*, (*infra*, pp. 65-71), which authorizes the Secretary of the Interior to create such an interest in the public domain or which authorizes the Secretary to restrict, by contract or otherwise, the disposition of federal coal lands. Consequently, even if the Secretary had inserted a specific provision in respondent's contract agreeing not to lease other public coal lands unless a need for an additional mine could be shown, it would have been void. A

[14] If respondent has a right which enables it to enforce a restriction upon the use of the lands here involved it would have the same right with respect to other public coal lands anywhere in the United States. Whether respondent could establish any injury flowing from the lease of other lands in all cases and thereby succeed in enjoining the Secretary is immaterial. The question here is whether it has a right which gives it standing to maintain such a suit.

regulation purporting to accomplish the same result would also be invalid. The United States is neither bound nor estopped by the unauthorized acts of its agents in dealing with its property. *Utah Power & Light Co.* v. *United States*, 243 U. S. 389, 408-409; cf. *United States* v. *San Francisco*, 310 U. S. 16, 31-32.

The court below found authority for the regulation, as construed by it, by reasoning that since the Secretary "had power to withdraw lands from leasing" he "could impose the conditions upon which he would lease." (R. 104). But the power to withdraw lands does not carry with it authority to create property interests in persons benefited by the withdrawal, unless there is an express statutory grant, or an implied Congressional delegation, of the power to do so. *Sioux Tribe* v. *United States*, 316 U. S. 317, 324-331; *Ute Indians* v. *United States*, 330 U. S. 169, 176. Express statutory authorization is admittedly absent, and there is not the slightest foundation for implying such a grant of power from the terms or purposes of the Mineral Leasing Act. *Infra*, pp. 43-45, 65-71; *supra*, pp. 24-27, 41.

Moreover, the discretionary power vested in the Secretary (30 U. S. C. 201, *infra*, pp. 65-66) to determine whether or not a lease should issue was by its nature a continuing authority and duty which the Secretary was not empowered to abdicate. Cf. *Wilbur* v. *United States*, 281 U. S. 206, 216-217.

le could not, under his authority to adopt general egulations to carry out the purposes of the act see Br. in Opp., p. 17), bind his successors by com- itting them to a particular policy in awarding eases. Nor could he in any way restrict or other- ise impair the constitutional power of Congress o dispose of public property.

B. Not only is there nothing in the Mineral Leas- ng Act which would authorize any action by the ecretary having the result given the regulation y the court below, but the whole purport of the ct militates against such an authorization. The umber of acres which may be leased to any one erson, association or corporation is limited. 30 . S. C. 201, 203, 204, 184. The Act also expresses strong policy against the use of public lands in estraint of trade. 30 U. S. C. 184. Moreover, it rovides that each lease shall contain such provi- ons as the Secretary shall deem necessary to in- re the sale of the production of such leased lands t reasonable prices, for the protection of the in- erests of the United States, for the prevention of onopoly and for the safeguarding of the public elfare. 30 U. S. C. 187. Other powers are granted or the purpose of encouraging the greatest ulti- ate recovery of coal. 30 U. S. C. 209.

Thus, a regulation permitting lessees to acquire right to restrict the leasing of other lands would e wholly inconsistent with the terms of the Act. t would be contrary to the Congressional mandate

that no lessee should have an interest in more than 2,560 acres. Despite the declaration of policy in the Act against the use of public lands in restraint of trade and despite the requirement that the Secretary make whatever provisions were deemed necessary to prevent monopoly, it would enable one lessee to force out of business a company whose deposits, like the one at hand, were nearing exhaustion, if it could not show that a competitor was unable to meet all the demand. It would thwart one of the avowed purposes of the Act to encourage the greatest ultimate recovery of coal from federal lands, by requiring the United States to bear the burden of an attempt to cure the ills of the coal industry. In addition, in situations like the present one, where an operator on non-federal lands desires to pursue a vein into contiguous federal lands, it might very well be that the ultimate recovery of the coal on the federal lands would depend upon that particular lease application being granted, even though a need for the coal which could not otherwise be met could not be shown. At a later time when a market need arose, but when the necessary equipment had been removed from the scene or deteriorated, an attempt to develop the remaining coal on the federal lands might be uneconomical—with the result that the federal deposits would be forever wasted.

It is submitted, therefore, that the authority granted the Secretary under the Mineral Leasing

Act does not authorize him to vest in federal coal lessees a negative easement in all other federal coal lands, or in any way to restrict or impair the constitutional power of Congress to control the disposition of public lands. And, if affirmative proof were needed to show that Congress did not intend to grant such authority, it is found in the express provisions of the Act limiting the acreage which may be leased to one person or corporation and declaring a policy to prevent monopoly and the use of federal lands in restraint of trade.[15]

III

The Amended Complaint Is Subject to Dismissal Because It Seeks to Maintain a Suit Against the United States Without the Sovereign's Consent.

When this case was originally dismissed by the district court, it rejected petitioner's claim that the United States was an indispensable party (R. 9, 30). Upon the second appeal, the majority opinion made no mention of this question, although one ground of Judge Edgerton's dissent was that "* * * the United States is a necessary party when suit is brought to prevent the leasing of its lands" (R. 106). His conclusion was, we submit, plainly correct.

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[15] It is our view, of course, that the Secretary of the Interior did not adopt, or intend to adopt, any such invalid regulation in 1934 or thereafter. *Supra*, pp. 20-33. Indeed, the illegality of the regulation, as interpreted by the court of appeals, supplies another reason for reading it as we urge.

A. The property sought to be leased is owned by the United States. The general principle is well established that "a proceeding against property in which the United States has an interest is a suit against the United States." *Minnesota* v. *United States*, 305 U. S. 382, 386; *Belknap* v. *Schild*, 161 U. S. 10, 18, 25; *Minnesota* v. *Hitchcock*, 185 U. S. 373, 387. It is equally clear that suits for specific enforcement of rights to secure government property, alleged to have arisen from contracts, constitute suits against the United States, and hence may not be prosecuted against a government officer. *Goldberg* v. *Daniels*, 231 U. S. 218; *Louisiana* v. *Garfield*, 211 U. S. 70; *Naganab* v. *Hitchcock*, 202 U. S. 473; *Oregon* v. *Hitchcock*, 202 U. S. 60; *New Mexico* v. *Lane*, 243 U. S. 52; *Larson* v. *Domestic & Foreign Corp.*, 337 U. S. 682.[16] Also, specific performance of governmental contracts cannot be obtained by means of securing an injunction or mandatory relief against governmental agents. *Louisiana* v. *Jumel*, 107 U. S. 711, 720-721; *Hagood* v. *Southern*, 117 U. S. 52, 67-68; *In re Ayers*, 123 U. S. 443, 502-504; *Levey* v. *Stockslager*,

[16] A different situation is presented, of course, where a government officer is under a ministerial duty to dispose of government property in a particular manner and hence relief is available by means of mandamus. *Santa Fe Pac. R. R. Co.* v. *Fall*, 259 U. S. 197, cited by respondent (Br. in Opp. p. 20), is of this nature. See also *Ballinger* v. *Frost*, 216 U. S. 240; *Payne* v. *Central Pac. Ry. Co.*, 255 U. S. 228; *Lane* v. *Hoglund*, 244 U. S. 174.

129 U. S. 470, 478; *Pennoyer* v. *McConnaughy*, 140 U. S. 1, 9-10; *Belknap* v. *Schild*, 161 U. S. 10, 18; *Tindal* v. *Wesley*, 167 U. S. 204, 219-220; *Ex parte Young*, 209 U. S. 123, 151-152; *Hopkins* v. *Clemson College*, 221 U. S. 636, 642; *Goldberg* v. *Daniels*, 231 U. S. 218; *Wells* v. *Roper*, 246 U. S. 335, 337-338; *Ex parte New York*, 256 U. S. 490, 500-501; *Goltra* v. *Weeks*, 271 U. S. 536, 546; *Mine Safety Co.* v. *Forrestal*, 326 U. S. 371; *Land* v. *Dollar*, 330 U. S. 731, 737; *Larson* v. *Domestic & Foreign Corp.*, 337 U. S. 682; *Transcontinental & Western Air* v. *Farley*, 71 F. 2d 288, 290-291 (C. A. 2), certiorari denied, 293 U. S. 603. Under these interrelated principles, the present case constitutes an attempt to sue the United States without its consent, whether the case be treated as a suit for the "prevention of breach of a restrictive provision in a contract" (R. 105), or as a suit to establish a property interest—in the nature of a negative easement—in the land sought to be leased to Big Horn. If the action be one to enforce respondent's rights under the lease-contract with the United States, it cannot be brought against the Secretary of the Interior; if it be considered a claim to a property interest in other Government-owned coal lands, it is likewise forbidden by established doctrine.

B. 1. Respondent argues (Br. in Opp. p. 19) that a different result follows because its "prayer for relief is purely negative and prohibitory, in substance as well as in form." But the fact that the

relief sought is in terms a negative injunction which does not literally direct performance of the alleged contract makes no difference. "An injunction against the breach of a contract is a negative decree of specific performance of the agreement." *Shubert* v. *Woodward*, 167 Fed. 47, 53 (C. A. 8). Indeed, the contention urged by respondent has long since been rejected by this Court in *In re Ayers*, 123 U. S. 443. In that case, the same distinction was offered (123 U. S. at p. 485), and after stating the principle as to suits to compel affirmative action by government officers, this Court stated (123 U. S. at pp. 502-503):

> The converse of that proposition must be equally true, because it is contained in it; that is, a bill, the object of which is by injunction, indirectly, to compel the specific performance of the contract, by forbidding all those acts and doings which constitute breaches of the contract, must also, necessarily, be a suit against the State. In such a case, though the State be not nominally a party on the record, if the defendants are its officers and agents, through whom alone it can act in doing and refusing to do the things which constitute a breach of its contract, the suit is still, in substance, though not in form, a suit against the State.

See also *Wells* v. *Roper*, 246 U. S. 335, and *Mine Safety Co.* v. *Forrestal*, 326 U. S. 371, in which the relief sought was also purely negative, but the non-

ction of the officers would amount to performance of a government contract. Obviously, a suit may be no less a suit against the sovereign because it seeks to compel the non-action, rather than action, of the government officer. *Minnesota* v. *Hitchcock*, 185 U. S. 373, 387; *Oregon* v. *Hitchcock*, 202 U. S. 60, 69-70; *Morrison* v. *Work*, 266 U. S. 481, 485-488; *Larson* v. *Domestic & Foreign Corp.*, 337 U. S. 682, 689.

2. The fact that in the instant case the alleged promise of the government is negative, that is, a promise not to lease its land rather than an affirmative promise to lease or sell its property, is likewise immaterial. In logic, whether the sovereign's promise is negative or affirmative, the same limitations upon its enforcement apply, since in either case it is the sovereign's alleged agreement which is basic to the suit. The contract here involved is between respondent and the United States (R. 77-84, 104). Petitioner, not being a party thereto, is "not capable in law of committing a breach of it." *In re Ayers*, 123 U. S. 443, 503. He has no personal interest either in respondent's contract or in the proposed lease, which is alleged to be a threatened breach of respondent's agreement. On the other hand, in the execution of the lease of public lands to Big Horn, he proposed to act merely as an agent of the Government, and, indeed, it is only because of his official authority that respondent's interests are at all endangered by what he proposes to

do. *Wells* v. *Roper*, 246 U. S. 335, 337. Moreover, the relief sought, although nominally a restraint upon petitioner's leasing of public lands, is in reality against his principal, the United States, in that the restraint will be imposed upon the use and disposition of property, title and possession of which is admittedly in the Government. *International Postal Supply Co.* v. *Bruce*, 194 U. S. 601. In essence, therefore, respondent's complaint is that under its lease contract, it has the right to insist that the United States not lease any of its public lands for coal mining purposes unless a need for an additional mine is found, and that the United States acting through petitioner, its agent, should be restrained from entering into coal leases absent the required finding of need. Thus, by the indirect means of enjoining a government officer from performing an act which it is alleged will constitute a breach of contract, respondent seeks specific performance of the contract by the Government. Plainly, as stated above, such a proceeding is in essence the same as a suit seeking specific performance of a contract to sell property to respondent. *Supra*, pp. 46-48.

3. Respondent argues (Br. in Opp. p. 20) that it is not seeking to enforce specifically a government contract but rather is attempting to enjoin unauthorized action which threatens its "property rights." Of course, enforcement of specific performance of a government contract cannot be justified by circularly saying that the rights alleged to

have been secured under the contract are "property rights", and hence that an attempted breach of the contract by a government officer necessarily constitutes an unauthorized interference with such property rights. *Larson* v. *Domestic & Foreign Corp.*, 337 U. S. 682, 685, 688, 692, 700-1, 703. But that seems to be respondent's argument. The only other meaning that can be given to the argument is that respondent has been granted a property right to be free of competition from other government coal lands. That is simply an assertion of a property interest in the nature of a negative easement in the other lands sought to be leased. But such an asserted property interest cannot be established in the absence of the United States which is admittedly the owner of fee simple title. Cf. *Stanley* v. *Schwalby*, 162 U. S. 255, 272; *Belknap* v. *Schild*, 161 U. S. 10. And in such a case it is immaterial whether or not it is alleged that the government official is acting in excess of or without statutory authority, in refusing to recognize the assumed private interests in the government lands. *Larson* v. *Domestic & Foreign Corp.*, 337 U. S. 682, 691; *Mine Safety Co.* v. *Forrestal*, 326 U. S. 371, 374-375; *Morrison* v. *Work*, 266 U. S. 481, 485-488; *New Mexico* v. *Lane*, 243 U. S. 52, 58; *Naganab* v. *Hitchcock*, 202 U. S. 473, 475-476. Here, as in the *Larson* case, it is clear that, apart from the disputed regulation, petitioner

had statutory authority to issue the lease to Big Horn. The result is more obvious here, however, because respondent's contention is not, as in the *Larson* case, that it has full ownership of the property but simply that, as a result of the Secretary's action in promulgating the regulation and issuing a lease to it, it now has a right to control the leasing of admittedly federal property. Even assuming that the present Secretary would exceed his authority if the lease to Big Horn were consummated, respondent's claim must fail, as one against the sovereign, because it necessarily involves the "disposition of unquestionably sovereign property" (*Larson*, 337 U. S., at 691), and would interfere with the Government's management and disposition of public lands by enjoining its officials (*Morrison* v. *Work*, *supra*, at 485).

Cases such as *United States* v. *Lee*, 106 U. S. 196; *Philadelphia Co.* v. *Stimson*, 223 U. S. 605; *Santa Fe Pac. R. R. Co.* v. *Fall*, 259 U. S. 197; *Frost* v. *Corporation Commission*, 278 U. S. 515; and *Land* v. *Dollar*, 330 U. S. 731, relied upon by respondent (Br. in Opp. p. 20), are clearly distinguishable. In none of them was the officer dealing with property in which the sovereign had any substantial interest, but was, at least on the basis of the plaintiff's allegations, guilty of interfering with property of a private individual.[17] Unless the officer could es-

[17] In fact, the *Frost* case is wholly immaterial here, since the question of sovereign immunity was not involved, but only standing to sue. The question of whether the plaintiff

tablish a valid authority for his action, he was acting as a mere individual, and could be enjoined as any individual acting tortiously. Thus, in the *Lee* case, a suit in ejectment against Government officers, plaintiff claimed title, while the officers defended by alleging title in the United States by virtue of a tax sale. At the trial, the jury found that the United States had acquired no title under the tax sale proceedings and the Government's lack of title was assumed in this Court (106 U. S. at p. 204). Only on that assumption was there any materiality in the question of the officers' authority (106 U. S. at pp. 219-220). See *Larson* v. *Domestic & Foreign Corp.*, 337 U. S. 682, 696-697. And in the *Stimson* case, a suit against the Secretary of War to set aside harbor lines encroaching on plaintiff's land, plaintiff's title was conceded, so that there was no question as to whether the Secretary was dealing with Government property, but only as to whether his act was duly authorized (223 U. S. at pp. 619-620, 622-623). Likewise, in the *Fall* case, a suit to enjoin the Secretary of the Interior from canceling selections of public lands, it was held that title had vested in the plaintiff immediately upon selection, with the result that the United States held only a bare legal title and that

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has shown sufficient property interest to give him standing to sue is, of course, entirely separate from the question of sovereign immunity from suit. Cf. *Larson* v. *Domestic & Foreign Corp.*, 337 U. S. 682, 693. Public property was in no way affected by the suit in the *Frost* case.

the Secretary had no authority to cancel, but only a ministerial duty to issue the patent. And in the *Land* case, plaintiffs claimed title to shares of stock alleged to be wrongfully withheld by officials, who asserted title to be in the Government. The defense depended upon authority to acquire the stock and also an interpretation of the contract under which the officials had obtained possession (330 U. S. at pp. 735-736). It was merely held that the district court had "jurisdiction to determine its jurisdiction" by determining the question of title (330 U. S. at p. 739).[18]

In contrast, in the present case the title and right of possession of the United States in the lands proposed to be leased are not questioned. Thus, acceptance of respondent's argument would result not in the conclusion that petitioner is a trespasser, as in the *Lee* case, but simply in a limitation upon his power, as a government official, to lease the land. Such restraint would expend itself, not upon petitioner or his property, but upon the lands and treasury of the United States.[19] Indeed, by virtue of the temporary restraint issued in this case, public lands have been forced to lie idle for

[18] The question of title was subsequently determined in favor of the Government. *Dollar* v. *Land*, 82 F. Supp. 919 (D. D. C.), now on appeal to the Court of Appeals for the District of Columbia Circuit.

[19] Cf. *Land* v. *Dollar*, 330 U. S. 731, 738; *Williams* v. *Fanning*, 332 U. S. 490, 493; *Larson* v. *Domestic and Foreign Corp.*, 337 U. S. 682, 688, 691.

the two years since the complaint was filed, when they could have been developed and put to use and the benefits derived therefrom in royalties deposited in the Treasury. Clearer proof that the suit is, in fact, against the United States and not merely against an officer can hardly be imagined.

IV

In Any Event, the Court Below Erred in Ordering that the Temporary Restraint Imposed by the District Court Be Continued in Effect Until Final Disposition of the Action by the District Court.

A. Ever since the filing of the original complaint on November 4, 1947, petitioner has been restrained from issuing the proposed leases.[20] Upon remand

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[20] The following is a summary of the various restraining orders entered in the case:

(1) November 4, 1947—*ex parte* order entered by district court, enjoining leasing for a period of ten days (R. 89, 108).

(2) November 14, 1947—after hearing on motion for preliminary injunction and motion to dismiss complaint, district court continued temporary restraint to November 18, 1947 (R. 89, 108).

(3) November 17, 1947—district court continued temporary restraint to November 21, 1947, and at the same time denied motion for preliminary injunction and oral application for preliminary injunction pending appeal from dismissal of complaint (R. 18, 108).

(4) November 21, 1947—court of appeals continued restraining order pending disposition of respondent's motion for temporary injunction pending appeal (R. 89).

(5) December 4, 1947—court of appeals issued a temporary injunction pending appeal (R. 89-90, 108).

(6) April 23, 1948—court of appeals, in affirming dismissal of complaint, continued its temporary injunction until ten days after mandate was filed in district court (R. 36).

after the first appeal the district court on June 4, 1948, entered a temporary restraint (R. 108-109), upon consent of petitioner (R. 87), which enjoined the issuance of the proposed leases until the disposition of respondent's motion for leave to file the amended complaint, and, if said motion should be granted, until disposition of respondent's motion for preliminary injunction (R. 108-109). On July 6, 1948, the district court overruled respondent's motion for leave to amend and denied its motion for preliminary injunction, but at the same time extended the restraint for ten days to permit appeal (R. 87). Over petitioner's objection, the court below continued the restraint pending final disposition of the appeal (R. 92), and, in reversing the order denying respondent's motion for leave to amend, ordered that the order issued by the district court on June 4, 1948, "will be continued in

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(7) June 4, 1948—on consent of parties, district court issued its order restraining leasing until the further order of the court upon the disposition of respondent's motion for leave to file an amended complaint (R. 108-109).

(8) July 6, 1948—when overruling motion for leave to file an amended complaint and denying motion for preliminary injunction, district court continued restraint for ten days to permit appeal (R. 87).

(9) July 16, 1948—court of appeals continued restraint in effect pending final disposition of the appeal or further order of the court (R. 92).

(10) January 31, 1949—court of appeals, in reversing denial of motion for leave to amend, continued restraint in effect until final disposition of the action by the district court (R. 106).

effect until final disposition of the action by that court" (R. 106).[21] In essence, therefore, the court below has directed the district court to convert its temporary restraining order into a preliminary injunction *pendente lite*.[22] *Sims* v. *Greene*, 160 F. 2d 512, 517 (C.A. 3); *Davis* v. *Hayden*, 238 Fed. 734, 737 (C.A. 4); cf. *Ettelson* v. *Metropolitan Life Ins. Co.*, 317 U.S. 188.

Respondent asserts (Br. in Opp. pp. 21-22) that the court below has continued the temporary restraining order only until action by the district court in allowing the filing of the amended com-

[21] It is not clear whether the court below intended merely to direct the district court to extend the restraint, or whether it intended to adopt the district court's restraint as its own and to extend it as its own process. However, it is assumed for the purposes of the argument made herein that this part of the judgment is a direction to the district court. This assumption obviates the anomalous situation of having the court of appeals retain jurisdiction over the injunction, while the rest of the case finds its way through the district court, and removes any question as to the jurisdiction of the court of appeals to issue such an injunction as its own process. *In re Philadelphia & Reading Coal & Iron Co.*, 103 F. 2d 901, 903 (C. A. 3); cf. *De Beers Mines* v. *United States*, 325 U. S. 212, 217; *Roche* v. *Evaporated Milk Assn.*, 319 U. S. 21, 25-26. In any event, the injunction would be subject to the same attack (see *infra*, pp. 59-63) if it were in fact intended as the distinct process of the court of appeals.

[22] Both the District Court (R. 87) and the court of appeals (R. 106) used the term "temporary injunction" instead of "temporary restraining order", but it is quite plain that the restraint issued was not a preliminary injunction, as envisaged by Rule 65 of the Federal Rules of Civil Procedure, but in the nature of a temporary restraining order. Cf. R. 108-109.

plaint and denying the motion to dismiss, as directed by the court below. In view of the settled meaning of the phrase "final disposition of the action," respondent's argument in this respect is obviously without any basis. Moreover, even under respondent's interpretation, it should be pointed out that the temporary restraining order has been improperly transformed into a preliminary injunction. Under Rule 65(b) of the Federal Rules of Civil Procedure, a temporary restraining order may not be continued beyond twenty days without consent, and the order ceases to be a temporary restraining order when continued, without consent, for any substantial length of time beyond the prescribed period. *Sims* v. *Greene*, 160 F. 2d 512, 516-517 (C.A. 3). Thus, here, where the temporary restraining order was first entered on June 4, 1948 (R. 108-109), and continued for a further period of ten days by the district court without petitioner's consent (R. 87), the further indefinite continuation directed by the court of appeals has transformed the order into a preliminary injunction, issued without hearing or findings. This, in itself, would be error.[23]

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[23] In arguing to the contrary, respondent asserts (Br. in Opp., p. 22) that upon the district court's granting leave to amend the complaint, the continuance of the injunction by the court of appeals would automatically expire and that the terms of the district court order of June 4, 1948 (i. e., "in the event the motion for leave is granted then the motion for preliminary injunction shall be further heard within ten

B. Even though it be assumed, for the moment, that the court below, in aid of its appellate jurisdiction, had the power to direct the district court to enjoin leasing until the final disposition of the action, this is not an appropriate case for the exercise of that power. There is no indication that the district court is seeking to obstruct the appellate jurisdiction of the court below, and respondent has a right of appeal from any order refusing an injunction. 28 U.S.C. 1292(1); cf. *Roche* v. *Evaporated Milk Assn.*, 319 U.S. 21, 25-26. These difficulties could, of course, have been avoided if the court below, as it did on the first appeal, had simply entered its own temporary injunction pending appeal and for a reasonable time after its mandate issued.

Moreover, it is plain that under the circumstances here present the court below had no jurisdiction, even in aid of its appellate jurisdiction, to do what it has done, since its action is not "agreeable to the usages and principles of law." 28 U.S.C. 1651. Due process and Rules 52(a) and 65(a) of the Federal Rules of Civil Procedure re-

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days thereafter") would automatically give an additional ten days for further hearing on the question of a preliminary injunction. One fallacy in this interpretation of the judgment of the court below is that there is now no motion for a preliminary injunction pending in the district court. Respondent's motion for such injunction was denied on July 6, 1948 (R. 87). Hence, the part of the order of June 4, 1948, relied upon by petitioner, has been inoperative for more than a year.

quire that, absent consent of the party sought to be enjoined, an injunction *pendente lite* be issued only after a full hearing, and that the injunction order be supported by findings of fact and conclusions of law. *Mayo* v. *Canning Co.*, 309 U.S. 310, 316-317; *Public Serv. Comm'n* v. *Wisconsin Tel. Co.*, 289 U.S. 67; *Sims* v. *Greene*, 161 F. 2d 87 (C.A. 3); *Bank of Madison* v. *Graber*, 158 F. 2d 137, 141-142 (C.A. 7); *Shannon* v. *Retail Clerks, International P. Ass'n*, 128 F. 2d 553, 555 (C.A. 7). There was no hearing on the matter in the district court, and in the court of appeals petitioner opposed the granting of an injunction pending appeal. The court of appeals neither made findings which would reveal the grounds for its action, nor purported to be correcting findings made by the district court.[24] Thus, the court below is directing the district court to do what the district court is forbidden to do, i.e., issue a preliminary injunction without hearing and without findings. Obviously, the "all writs" statute (28 U.S.C. 1651) confers no such power.

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[24] In denying the motion for preliminary injunction filed with the amended complaint (R. 87), the district court made no findings. However, findings were not necessary, since, when the motion for leave to amend was denied, the motion for preliminary injunction became moot, there being no complaint before the court. In *denying* the motion for preliminary injunction filed with the original complaint, the district court had made findings and conclusions (R. 28-30). The court below could not and did not purport to be reviewing these findings, which obviously could not support the issuance of an injunction *pendente lite*.

These objections to the action of the court of appeals in ordering the issuance of a preliminary injunction without a hearing or findings are not purely technical, but go to the very roots of proper and fair procedure. Just as in the case of any equitable relief, respondent has no right to the granting of a preliminary injunction, but such relief may be granted or withheld in the sound discretion of the trial court. *Roche* v. *Evaporated Milk Assn.*, 319 U.S. 21, 25; *Deckert* v. *Independence Corp.*, 311 U.S. 282, 290. Exercise of such discretion requires consideration of such factors as the validity of defenses, the relative damages to be sustained if the injunction is granted or refused, the difficulty of ascertaining damages, and many similar matters, and only by affording a full hearing to all parties may the court properly exercise this discretion.[25] Thus, without a hearing be-

[25] To elaborate on only one of the factors to be considered, it may be pointed out that respondent acknowledges that either it or the proposed lessee will be damaged by the ultimate decision in this case (R. 22, 27). It is clear that the proposed lessee is also suffering damage due to the temporary restraint, and there is, to say the least, a question of fact as to the seriousness of the damage it is suffering because of its inability to begin operations on the public lands (R. 27, 31), as compared to the damage respondent might suffer by issuance of the lease. The United States is also losing rentals during the period of restrajnt. Upon all the facts, it might well be found to be more equitable to remove all restraint, and leave respondent to its remedy at law, or to impose conditions upon equitable relief which would protect the interests of both the parties and Big Horn Coal Com-

ing held, there could not have been any exercise of the sound discretion to which petitioner is entitled. And absent findings, this Court is left to speculate as to what facts, if any, exist to support the preliminary injunction, so that any right of review would be nugatory. Plainly, the court below has acted beyond its powers, and at the very least its judgment should be modified to leave with the district court discretion to determine, after hearing, whether or not an injunction *pendente lite* should issue.

Finally, the direction of the court of appeals ties the hands of the district court throughout the course of the litigation. It leaves the district court without discretion or power to modify or to dissolve the injunction *pendente lite* regardless of how circumstances may change with the passage of time. It would also seem to leave petitioner without any possibility of relief if circumstances should change. The district court would be required by the present decision to deny any application for modification or dissolution, and any appeal from its action would probably be fruitless since the court of appeals could hardly reverse for

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pany and its employees who could enjoy the employment advantages of expanded operations. Where "large public interests are concerned and the issuance of an injunction may seriously embarrass the accomplishment of important governmental ends, a court of equity acts with caution . . ." *Hurley v. Kincaid*, 285 U. S. 95, 104; cf. *Harrisonville v. Dickey Clay Mfg. Co.*, 289 U. S. 334, 338.

obedience of its own command. The court of appeals would seem to lack power to alter its present judgment either by modification or dissolution, since the term at which it was entered has expired. Hence, it is submitted that the extension of the interlocutory injunction until final disposition of the action constitutes such a clear abuse of discretion as to warrant invocation of this Court's supervisory power. Cf. *Landis* v. *North American Co.*, 299 U.S. 248, 257.[26]

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[26] Respondent suggests (Br. in Opp. pp. 22-23) that, rather than seeking review in this Court, petitioner should have first sought relief as to the terms of the injunction in the court of appeals. Since this point is only of secondary importance in the disposition of this case and need be considered by this Court only if the other points advanced by petitioner are rejected, the seeking of such relief in the court below would have served merely to delay still further the final disposition of the case. As the court of appeals itself recognized more than nine months ago, "This litigation has already consumed a long time" (R. 99), more than two years at the present time, during which time the management of the public lands has been subject to judicial restraint. Cf. *Perkins* v. *Lukens Steel Co.*, 310 U. S. 113, 130-131. *Supra*, pp. 55-56.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment below is erroneous and should be reversed.

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DECEMBER, 1949.

APPENDIX

Relevant portions of the Mineral Leasing Act of February 25, 1920, 41 Stat. 437, as amended, 30 U.S.C. 181 *et seq.*, in effect at the time of the departmental decisions herein, are as follows:

> Sec. 1 [30 U.S.C. 181]. * * * deposits of coal * * * and lands containing such deposits owned by the United States * * *, except as hereinafter provided, shall be subject to disposition in the form and manner provided by this Act * * *.
>
> Sec. 2 [30 U.S.C. 201]. * * * the Secretary of the Interior is authorized to, and upon the petition of any qualified applicant shall, divide any of the coal lands or the deposits of coal, classified and unclassified, owned by the United States, outside of the Territory of Alaska, into leasing tracts of forty acres each, or multiples thereof, and in such form as, in the opinion of the Secretary of the Interior, will permit the most economical mining of the coal in such tracts, but in no case exceeding two thousand five hundred and sixty acres in any one leasing tract, and thereafter the Secretary of the Interior shall, in his discretion, upon the request of any qualified applicant or on his own motion, from time to time, offer such lands or deposits of coal for leasing, and shall award leases thereon by competitive bidding or by such other methods as he may by general regulations adopt, to any qualified applicant: * * * where prospecting or exploratory work is necessary to determine the exis-

tence or workability of coal deposits in any unclaimed, undeveloped area, the Secretary of the Interior may issue, to applicants qualified under this Act, prospecting permits for a term of two years, for not exceeding two thousand five hundred and sixty acres; and if within said period of two years thereafter, the permittee shows to the Secretary that the land contains coal in commercial quantities, the permittee shall be entitled to a lease under this Act for all or part of the land in his permit: * * * no lease of coal under this Act shall be approved or issued until after notice of the proposed lease, or offering for lease, has been given for thirty days in a newspaper of general circulation in the county in which the lands or deposits are situated * * *.

Sec. 3 [30 U.S.C. 203]. * * * any person, association, or corporation holding a lease of coal lands or coal deposits under this Act may, with the approval of the Secretary of the Interior, upon a finding by him that it will be for the advantage of the lessee and the United States, secure modifications of his or its original lease by including additional coal lands or coal deposits contiguous to those embraced in such lease, but in no event shall the total area embraced in such modified lease exceed in the aggregate two thousand five hundred and sixty acres.

Sec. 4 [30 U.S.C. 204]. * * * upon satisfactory showing by any lessee to the Secretary of the Interior that all of the workable deposits of coal within a tract covered by his or its

lease will be exhausted, worked out, or removed within three years thereafter, the Secretary of the Interior may, within his discretion, lease to such lessee an additional tract of land or coal deposits, which, including the coal area remaining in the existing lease, shall not exceed two thousand five hundred and sixty acres, through the same procedure and under the same conditions as in case of an original lease.

Sec. 7 [30 U.S.C. 207]. * * * for the privilege of mining or extracting the coal in the lands covered by the lease the lessee shall pay to the United States such royalties as may be specified in the lease, which shall be fixed in advance of offering the same, and which shall not be less than 5 cents per ton of two thousand pounds, due and payable at the end of each third month succeeding that of the extraction of the coal from the mine, and an annual rental, payable at the date of such lease and annually thereafter, on the lands or coal deposits covered by such lease, at such rate as may be fixed by the Secretary of the Interior prior to offering the same, which shall not be less than 25 cents per acre for the first year thereafter, not less than 50 cents per acre for the second, third, fourth, and fifth years, respectively, and not less than $1 per acre for each and every year thereafter during the continuation of the lease, except that such rental for any year shall be credited against the royalties as they accrue for that year. * * * the Secretary of the Interior may permit suspen-

sion of operation under such lease for not to exceed six months at any one time when market conditions are such that the lease can not be operated except at a loss.

Sec. 27 [30 U.S.C. 184]. No person, association, or corporation, except as herein provided, shall take or hold coal * * * leases or permits during the life of such leases in any one State, exceeding in the aggregate acreage two thousand five hundred and sixty acres * * *. No person, association, or corporation shall take or hold at one time any interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease or leases, permit or permits, under the provisions hereof, which together with the area embraced in any direct holding of a lease or leases, permit or permits, under this Act, or which, together with any other interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease or leases, permit or permits, under the provisions hereof for any kind of minerals hereunder, exceeds in the aggregate an amount equivalent to the maximum number of acres of the respective kinds of minerals allowed to any one lessee or permittee under this Act. * * * Except as in this Act provided, if any of the lands or deposits leased under the provisions of this Act shall be subleased, trusteed, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tacitly or in any manner whatso-

ever, so that they form a part of or are in anywise controlled by any combination in the form of an unlawful trust, with the consent of the lessee, or form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal * * * entered into by the lessee, or any agreement or understanding, written, verbal, or otherwise, to which such lessee shall be a party, of which his or its output is to be or become the subject, to control the price or prices thereof or of any holding of such lands by any individual, partnership, association, corporation, or control in excess of the amounts of lands provided in this Act, the lease thereof shall be forfeited by appropriate court proceedings.

Sec. 29 [30 U.S.C. 186]. * * * any permit, lease, occupation, or use permitted under this Act shall reserve to the Secretary of the Interior the right to permit upon such terms as he may determine to be just, for joint or several use, such easements or rights of way, including easements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in this Act, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees, or permittees, and for other public purposes. * * *

Sec. 30 [30 U.S.C. 187]. * * * The lessee may, in the discretion of the Secretary of the Interior, be permitted at any time to make

written relinquishment of all rights under such a lease, and upon acceptance thereof be thereby relieved of all future obligations under said lease, and may with like consent surrender any legal subdivision of the area included within the lease. Each lease shall contain * * * such other provisions as he may deem necessary to insure the sale of the production of such leased lands to the United States and to the public at reasonable prices, for the protection of the interests of the United States, for the prevention of monopoly, and for the safeguarding of the public welfare * * *.

Sec. 32 [30 U.S.C. 189]. * * * the Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this Act * * *.

Sec. 37 [30 U.S.C. 193]. * * * the deposits of coal * * * herein referred to, in lands valuable for such minerals * * * shall be subject to disposition only in the form and manner provided in this Act * * *.

Sec. 39 [30 U.S.C. 209]. The Secretary of the Interior for the purpose of encouraging the greatest ultimate recovery of coal, oil, or gas and in the interest of conservation of natural resources is authorized to waive, suspend, or reduce the rental, or minimum royalty, or reduce the royalty on an entire leasehold, or on any tract or portion thereof segregated for

royalty purposes, whenever in his judgment it is necessary to do so in order to promote development, or whenever in his judgment the leases cannot be successfully operated under the terms provided therein. In the event the Secretary of the Interior, in the interest of conservation, shall direct or shall assent to the suspension of operations and production under any lease granted under the terms of this Act, any payment of acreage rental or of minimum royalty prescribed by such lease likewise shall be suspended during such period of suspension of operations and production; and the term of such lease shall be extended by adding any such suspension period thereto.

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